

REPRESENTATIVE FOR PETITIONER:

Robert E. Hudson, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Nancy Hardwick-Gates, Miami County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|------------------------|---|------------------|--------------------------|
| Robert E. Hudson, |) | Petition No: | 52-016-07-1-5-10000A |
| |) | | |
| Petitioner, |) | Parcel No: | 52-08-27-102-011.000-016 |
| |) | | |
| v. |) | | |
| |) | County: | Miami |
| Miami County Assessor, |) | Township: | Peru |
| |) | | |
| Respondent. |) | Assessment Year: | 2007 |

Appeal from the Final Determination of
Miami County Property Tax Assessment Board of Appeals

April 7, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES

1. The issues presented for consideration by the Board are whether the Petitioner timely filed his appeal of the Property Tax Assessment Board of Appeals' determination and, if he timely filed his petition, whether the assessed value of his property is overstated.

PROCEDURAL HISTORY

2. On September 5, 2008, Robert E. Hudson (the Petitioner) filed a Form 130, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment, for the March 1, 2007, assessment date. On October 21, 2008, the Miami County Property Tax Assessment Board of Appeals (PTABOA) issued its Notification of Final Assessment Determination. The PTABOA changed the condition of the Petitioner's house from fair to poor. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Hudson filed a Form 131 Petition for Review of Assessment on December 23, 2008, petitioning the Board to conduct an administrative review of his petition.
3. On January 14, 2009, the Board issued a Notice of Defect in Completion of Assessment Appeal Form (Notice of Defect) to the Petitioner. The Board requested that the Petitioner furnish a copy of the PTABOA's final determination – Form 115, a copy of the document initiating the appeal at the local level, and a signed statement certifying the Petitioner provided the local officials with a copy of his appeal to the Board. On January 21, 2009, the Petitioner returned the Form 131 with Section V completed, a copy of the Form 115 and a copy of his Form 130. Upon receipt of the Form 115, the Board found the Form 131 petition appeared to be untimely filed.
4. On January 22, 2009, the Board issued a second Notice of Defect to the Petitioner. The Notice of Defect stated that the Form 131 petition appeared to be untimely filed and

requested the Petitioner to show evidence he timely filed his Petition. On February 4, 2009, the Petitioner returned the Form 131 with two letters explaining his position on the timely filing of the appeal and a letter from Sara McAuliffe, the Miami County Deputy Assessor, dated December 1, 2008.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on January 15, 2010, in Peru, Indiana.

6. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Robert E. Hudson, Property owner
For the Respondent:
Nancy Hardwick-Gates, Miami County Assessor
Sara McAuliffe, Miami County Deputy Assessor
Mary Kaye Jones, Miami County Deputy Assessor

7. The Petitioner requested that the documents attached to his Form 131 petition be incorporated as his evidence for the appeal. The Form 131 has been labeled for the record as Board Exhibit A. The exhibits attached to Board Exhibit A and read into the record include the following:
 - a. Two property record cards for Parcel No. 52-08-27-102-011.000-016, located at 386 East Third Street, Peru,
 - b. PTABOA's Notice of Formal Hearing,
 - c. Comparative Market Analysis prepared by Donna Strickland, dated September 4, 2008, four additional multiple listing sheets (MLS) and sales prices on five properties located in the Petitioner's neighborhood,
 - d. Photographs and handwritten narratives on comparable properties for five neighboring properties and the subject property.

8. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Respondent’s response to the Petitioner’s untimely appeal filing, excerpts of the Form 130, the Form 115, and the Form 131, and a letter from Sara McAuliffe, the Miami County Deputy Assessor to Mr. Hudson, dated December 1, 2008,

Respondent Exhibit 2 – Respondent’s response to the Petitioner’s market analysis and property record cards for Parcel No. 52-08-27-102-011.000-016 located at 386 East Third Street, Peru, Parcel No. 52-08-28-410-073.000-016 located at 387 West Sixth Street, Peru, Parcel No. 52-08-27-102-018.000-016 located at 389 East Main Street, Peru, Parcel No. 52-08-27-401-188.000-016 located at 262 East Second Street, Peru, and Parcel No. 52-08-26-204-009.000-016 located at 529 East Main Street, Peru,

Respondent Exhibit 3 – Respondent’s Sales Comparison for Neighborhood 15126, property records for Parcel No. 52-08-27-401-202.000-016 located at 333 East Third Street, Peru, Parcel No. 52-08-27-102-088.000-016 located at 425 East Fifth Street, Peru, Parcel No. 52-08-27-401-225.000-016 located at 225 East Third Street, Peru, Parcel No. 52-08-27-401-226.000-016 located at 225 East Third Street, Peru, Parcel No. 52-08-27-102-019.000-016 located at 387 East Main Street, Peru and Parcel No. 52-08-27-122-003.000-016 located at 379 East Main Street, Peru, and Petition for Correction of an Error – Form 133, dated September 5, 2008.

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated December 15, 2009,
Board Exhibit C – Hearing sign-in sheet.

10. The subject property is a 1,540 square foot single family home with a utility shed on a 30’ x 132’ lot located at 386 East Third Street, Peru, in Miami County.

11. The ALJ did not conduct an on-site inspection of the subject property.
12. For 2007, the PTABOA determined the assessed value of the property to be \$3,600 for land and \$17,500 for the improvements, for a total assessed value of \$21,100.
13. On his petition, the Petitioner contends the total assessed value of the property should be \$10,000 for 2007.

JURISDICTIONAL FRAMEWORK

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

15. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

17. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

18. The Petitioner contends he filed his Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130 (Form 130) on September 5, 2008. *Board Exhibit A*. The PTABOA conducted a hearing on October 13, 2008.¹ *Board Exhibit A; Hudson testimony*. Mr. Hudson testified that he received the PTABOA's final determination approximately two weeks after the PTABOA hearing, around the end of October 2008. *Hudson testimony*. According to Mr. Hudson, the PTABOA's decision resulted in a reduction of approximately \$3,000. *Id*. Because he believed the PTABOA's reduction was insufficient, he attempted to file a second Form 130 on November 20, 2008. *Board Exhibit A*. Mr. Hudson contends the county officials said that he could not file for another review until the first of the year. *Board Exhibit A*.
19. The Petitioner argues that he then received a letter dated December 1, 2008, from the county assessor's office stating the PTABOA made their determination and if he did not agree he would have to appeal to the State. *Board Exhibit A; Hudson testimony*. According to Mr. Hudson, he mailed a Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 (Form 131 petition) on December 22, 2008. *Id*. Mr. Hudson testified that he was not aware that he had to file a Form 131 petition with the Indiana Board of Tax Review until he received the letter from the county officials. *Hudson testimony*. Thus, the Petitioner contends his Form 131 petition was filed timely. *Id*.

¹ The Respondent agreed the Petitioner filed his Form 130 on September 5, 2008, and that the PTABOA conducted its hearing on October 13, 2008. *Respondent I; McAuliffe testimony*.

20. The Petitioner further contends his property is over-assessed based on its market value. *Hudson testimony*. In support of his position, Mr. Hudson submitted a comparable market analysis prepared by Donna Strickland.² *Board Exhibit A; Hudson testimony*. According to the Petitioner, the realtor determined his property should be listed at \$9,875 on September 4, 2008. *Id.*
21. Similarly, the Petitioner argues, the value of his property is overstated compared to properties in the surrounding area. *Hudson testimony*. In support of his position, the Petitioner submitted photographs and sales prices for six properties. *Board Exhibit A*. Mr. Hudson testified the property located at 389 East Main Street, which sold in 2007 for \$16,000, has a garage and is superior to his property. *Board Exhibit A; Hudson testimony*. Mr. Hudson's second comparable property, 383 East Third Street, has a basement, a furnace, and sits on a corner lot, but it has been for sale for about ten years and has not sold. *Id.* Mr. Hudson's third comparable property is located at 389 East Third Street. *Id.* Mr. Hudson testified that the property does not have a basement or furnace and it sold for only \$4,500. *Id.* The fourth comparable property, located at 384 East Third Street, sits on a corner lot, has a garage, basement and furnace, and sold for \$10,000. *Id.* The fifth comparable property, located at 390 East Third Street, is on a 30 foot lot and has a two-story garage and sold in 1970 for \$6,000. *Id.* The sixth property, the old Lincoln School located at the corner of Benton and Main Street, has a new roof, windows and air conditioning and sold for \$10,000. *Id.* According to the Petitioner, his comparable properties show houses in the surrounding area have sold for considerably less than his property's assessed value. *Hudson testimony*. Thus, Mr. Hudson concludes, his current assessment is excessive. *Id.*
22. Finally, the Petitioner contends his property is over-assessed based on the condition of the house. *Hudson testimony*. According to Mr. Hudson, the house's exterior is run-down, it needs a roof, the house has no basement or heat, and it has been broken into

² The Petitioner also attached four multiple listing sheets (MLS) to Ms. Strickland's comparable analysis. *Board Exhibit A*. The 2008 MLS show four properties were listed for sale from \$16,500 to \$124,900. *Board Exhibit A*.

approximately fifteen times. *Board Exhibit A; Hudson testimony.* In support of this contention, the Petitioner submitted ten exterior photographs of his house. *Board Exhibit A.*

RESPONDENT'S CONTENTIONS

23. The Respondent contends the PTABOA mailed its Notification of Final Assessment Determination to the Petitioner on October 21, 2008. *Respondent Exhibit 1; McAuliffe testimony.* According to the Respondent's witness, Ms. McAuliffe, after Mr. Hudson received the PTABOA's final determination he went to the assessor's office to retrieve the photographs he submitted to the PTABOA. *Id.* At that meeting, Ms. McAuliffe testified, she informed Mr. Hudson that if he did not agree with the PTABOA's decision his next step was to file a Form 131 petition with Indiana Board of Tax Review. *Id.* After the meeting, Mr. Hudson failed to take his photographs, which Ms. McAuliffe mailed back on December 1, 2008. *Id.* According to Ms. McAuliffe, when her letter was mailed to the Petitioner, Mr. Hudson still had until December 9, 2008, to file a Form 131 petition to the Board. *Id.* The Respondent contends that, because the Petitioner did not file a Form 131 petition with the county assessor's office until December 15, 2008, the Petitioner's appeal should be dismissed as untimely. *Id.*

24. The Respondent further contends the property under appeal is correctly assessed at \$21,100. *McAuliffe testimony.* In support of her position, the Respondent submitted 2005 and 2006 sales and assessment information from the county's sales ratio study for properties located in the area of the Petitioner's property. *Respondent Exhibit 3; McAuliffe testimony.* Based on the study, the Respondent's witness, Ms. McAuliffe, calculated that assessed values of 1.5-story houses or one story houses with attics in the Petitioner's neighborhood ranged from \$27.00 to \$43.63 per square foot, with an average value of \$35.54 per square foot. *Id.* Similarly, the sales price per square foot ranged from \$28.44 to \$49.67, with an average price of \$37.70 per square foot. *Id.* Ms. McAuliffe testified that the Petitioner's improvements are currently assessed for \$14.06

per square foot. *Id.* Thus, she concludes, Mr. Hudson's property is assessed below average for the area. *Id.*

25. Finally, the Respondent argues that the Petitioner's comparable analysis should not be given any weight in his appeal. *McAuliffe testimony.* The Respondent's witness, Ms. McAuliffe, testified that the four sales shown in the Petitioner's comparable analysis were sheriff's sales that occurred in 2007 and 2008. *Respondent Exhibit 2; McAuliffe testimony.* According to Ms. McAuliffe, local officials used sales that occurred in 2005 and 2006 to assess properties for the March 1, 2007, assessment date. *Id.*

ANALYSIS

26. As a threshold issue, the Board must determine whether the Petitioner timely filed his Form 131 Petition with the Board. Mr. Hudson testified that he received the PTABOA's final determination at the end of October 2008. *Hudson testimony.* Similarly, Ms. McAuliffe testified the PTABOA's Notification of Final Assessment Determination was mailed to the Petitioner on October 21, 2008. *Respondent Exhibit 1; McAuliffe testimony.* The Petitioner filed a copy of the Form 131 petition with the county assessor's office on December 15, 2008. *Id.* The Petitioner then mailed his Form to the Board on December 22, 2008. *Id.*
27. A taxpayer seeking review of a county board's action with respect to the assessment of the taxpayer's tangible property must file for review with the Indiana Board of Tax Review no later than 45 days after the date of the notice given to the party of the determination of the county board. Ind. Code § 6-1.1-15-3. The plain language of Indiana Code § 6-1.1-15-3(d) makes no exceptions. *Id.* "While a taxpayer has the right to challenge [his] property's value, [he] must also bear the responsibilities that are attached to the right. Indeed, because the legislature has created specific appeal procedures by which to challenge assessments, a taxpayer must comply with the statutory requirements

of filing the proper petitions within a timely manner.” *Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995) (citing *Reams v. State Board of Tax Commissioners*, 620 N.E.2d 758, 760-61 (Ind. Tax 1998)).

28. The PTABOA’s final determination was issued to the Petitioner on October 21, 2008. *Board Exhibit A*. Thus, under Indiana Code § 6-1.1-15-3(d), the Petitioner’s Form 131 petition was due by December 7, 2008.³ The Petitioner, however, filed his Form 131 petition with the county on December 15, 2008, and with the Board on December 22, 2008. Thus, both of the Petitioner’s attempts to file his Form 131 petition occurred more than 45 days after the PTABOA determination.
29. Mr. Hudson argues that he was unaware that he needed to file a Form 131 petition until he received a letter from the county assessor’s office, dated December 1, 2008, and therefore his petition was timely. *Board Exhibit A; Hudson testimony*. Ms. McAuliffe testified the county officials did mail a letter to the Petitioner on December 1, 2008. *Id.* The purpose of the letter, however, was to return the Petitioner’s photographs submitted to the PTABOA. *Id.* According to Ms. McAuliffe, because the Petitioner still had a “few days” remaining to file a petition with the Board, the letter stated “[t]he Board of Appeals made their determination of your appeal and if you don’t agree with it you need to appeal to the State of Indiana.” *Id.*
30. While the Petitioner’s situation is an unfortunate misunderstanding and, while the Board sympathizes with the Petitioner, the Board cannot simply ignore the filing requirements of Indiana Code. The Petitioner is charged with knowledge of the statute’s content and requirements. *See Simon v. Auburn, Bd. of Zoning Appeals*, 519 N.E.2d 205, 215 (Ind. Ct. App. 1988) (plaintiff is charged with knowledge of the law, so laches barred attack on zoning ordinance). Thus, Mr. Hudson failed to timely file his appeal and the Board

³ Because the statutory deadline fell on a Sunday, the Petitioner’s Form 131 petition could have still been timely filed on Monday, December 8, 2008.

therefore dismisses his appeal petition. Because he failed to timely file, the Board need not reach Mr. Hudson's substantive claims.

SUMMARY OF FINAL DETERMINATION

31. The Petitioner failed to timely file his appeal with the Board. The Board finds in favor of the Respondent.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.